



# **The Draft Charities and Trustee Investment (Scotland) Bill**

**A Response from**

**Cancer Research UK Scotland**

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## **INTRODUCTION**

### **About Cancer Research UK**

Cancer Research UK is the UK's leading research charity supported by over 30,000 volunteers. We are one of the few independent organisations with the ability to take pioneering research all the way from the laboratory bench to the patient's bedside.

This year we spent over £19 million on world-class research in Scotland on all aspects of cancer. Cancer Research UK supports the work of scientists, doctors and nurses in research institutes, universities and the major hospitals in Aberdeen, Dundee, Edinburgh, Glasgow and St Andrews. The Cancer Research UK group is made up of not only the larger charity of Cancer Research UK but a number of smaller subsidiary charities such as War On Cancer and the Gibb Fellowship Fund which provides, among other things, fellowships for Scottish-based research. Accordingly we are interested in the issues which effect both small and large charities. .

Cancer Research UK has offices in Edinburgh and Glasgow which enable us to focus fundraising efforts and maintain awareness of cancer and the need for research, particularly Scottish-based research, to the press and public

We have over 100 local committees who fundraise all year round. There are also 80 Scottish shops which help to generate income by selling new and high quality donated goods.

### **Cancer Research UK's position**

Cancer Research UK welcomes the reforms to charity law proposed in the draft Charities and Trustee Investment (Scotland) Bill and the Scottish Executive's recognition of the public's need for confidence that the growing voluntary sector will flourish within a robust framework that is transparent and accountable.

We responded in May 2001 to the consultation before the Scottish Charity Law Review Commission – the McFadden Report- and were pleased to have been involved in the recent extensive consultation which took place previous to the publication of the draft Bill.

Cancer Research UK strongly supports the implementation of the legislation as soon as possible and would urge the Scottish Parliament to begin its scrutiny of the Bill in October of this year.

We are supportive of attempts to clarify the definition of charity, the creation of the Office of the Scottish Charities Regulator, the right to regulate fundraising and the duties of the charity trustees, as key issues in securing public confidence and trust in the voluntary sector.

The principle of securing public confidence in the value of charities is our key consideration in responding to this consultation. Attached to this is the need to apply consistency and clarity wherever possible.

Running through the majority of our comments is a concern around the potential for increased regulatory burden due to dual regulation. We note that a key principle for the Scottish Executive in relation to this Bill is one of "proportionality" and we hope our comments help identify those areas where there is a risk of the regulatory burden being disproportionately increased.

We endorse the response to this consultation from the Association of Charity Shops, and would support its desire for a mechanism to enable the prosecution of bogus stock collections.

## **KEY POINTS**

*Throughout this response we refer to sections in the Bill itself, rather than the consultation paper.*

### **1. Office of the Scottish Charity Regulator**

We welcome the establishment of OSCR to encourage or facilitate compliance with charity law, investigate misconduct and provide information/assistance to the public and charities alike (*Part 1 Chapter 1 Section 1*).

OSCR's proposed powers are relatively wide and accordingly we consider good governance to be vital in order to reassure the public and the sector of OSCR's impartiality and accountability.

We would also encourage the continued development by OSCR of strong links with the charity sector to encourage accessibility and ensure that the lines of communication and consultation remain open.

### **2. Dual Registration**

The question which arises time and again for Cancer Research UK when considering the Bill's proposals is whether the effects of dual registration will prove administratively burdensome for charities operating across the UK. It would be helpful if clarification could be provided on the effects of dual registration.

#### **(a) The Charity Test & Guidance**

While we welcome a test for eligibility for charitable status we remain unclear as to how a charity operating across the UK will be certain as to whether it will pass the separate tests required by both the laws of Scotland and the laws of England and Wales in order to qualify as a charity in both jurisdictions.

Ideally both jurisdictions should have a clear, shared framework to assess what is, and what is not, a charity. The definitions proposed in each country are similar

but they will rely on interpretation based either on existing case law (which is not the same in each country) or on new definitions (which may not be identical or may not be applied in a similar manner). It is also not clear as to the position of a charity that is approved and recognised as a charity in one UK jurisdiction and is not recognised in another (*Part 1 Sections 7&8*). This is a serious concern for us.

**(b) Charity Names and Status - Objectionable names, Change of Name, Changes which require OSCR's consent and Power of OSCR to require charity to change name**

We note the terms of these provisions, which suggest that Cancer Research UK will be subject to supervision by two regulators. We would like clarification on the consensual powers: whether it is intended that any clearance given, for example, to a change in name or a change in constitution, requires the approval of both the Charity Commission and OSCR. If this is the intention then we are concerned at the increased administration burden and we would wish to raise the issue as to what happens if only one of the regulators approve the change or if they are approved at different times (*Part 1 Section 9, 10, 11, 13*).

**(c) Supervision of Charities**

The terms set out in Chapter 4 raise the issue of dual regulation of charities. Cancer Research UK is a high profile charity that runs its affairs to the highest standards and is content to be open to scrutiny from the public and from all interested parties. However, it would be disappointing if it found itself having to incur an increased administrative burden as a result of having to satisfy regulators in both jurisdictions that are applying the same methodology to reach conclusions about the same issues relating to the charity or a situation is created where an activity is restricted under a direction in one UK jurisdiction and is permitted in another jurisdiction, with obvious impacts for a charity that has cross border activities and dual registration. We would welcome clarification as to how the supervision of charities will be co-ordinated.

However, Cancer Research UK is primarily interested in maintaining the integrity and reputation of the charitable sector and is acutely conscious of the harm that rogue charities have done and can do to the image of the sector as a whole. Therefore, insofar as an increased regulatory burden seems necessary to achieve this aim, we are willing to co-operate with both OSCR and the Charity Commission in this regard. We would however be concerned if we found that the regulators were not paying as much attention to bogus fundraisers (whether charities or not) and allegations of fraud by disreputable charities as they were to large charities that are operating in more than one UK jurisdiction. Equally it would be unfortunate if bogus fundraisers merely relocated their activities to another jurisdiction when challenged in one and the whole process of review and challenge had to start all over again.

Subject to the clarification of the above points, Cancer Research UK welcomes the increased authority for OSCR and the general thrust of the Bill towards

raising the standards of charities and fundraisers in Scotland (*Part 1 Chapter 4 Sections 24-33*).

### **3. References to charitable status**

Cancer Research UK and its predecessors and most of its subsidiaries are Charities with a long history in both Scotland and in England and Wales. It would appear from the terms of Section 12 that the Charity will have to either describe itself as a "Charity Registered in Scotland" if it retains an English registered address or alternatively relocate its registered office to Scotland in order to become a "Scottish Charity" or a "Registered Scottish Charity". It is not clear to us what benefit is served by distinguishing between charities in this manner unless it is to enable people to show some preference towards one rather than the other. We regard such a development with concern and would urge that the descriptions applied to charities that operate in Scotland do not distinguish between them on the basis of their degree of "Scottishness" (*Part 1 Section 12*).

### **4 Information about charities etc**

We would urge consultation if the public is to have access to information that is not currently in the public domain, for example charity trustees' addresses in England and Wales are not disclosable (see related comment below on SCIO's and Chapter 6). We believe this should be consistent and not create a 'dual regime' of access and entitlement to information. We consider it important to ensure that a charity is not required to produce information that is not disclosable according to the confidentiality grounds applied in the Court of Session or pursuant to the laws of another jurisdiction. We would welcome an opportunity to consult on this seeing that steps for a 'unified' disclosure process is identified in Sections 20 and 23 (Sharing Information and Co-operation) (*Part 1 Sections 17-23*).

### **5 Scottish Charitable Incorporated Organisations**

It appears beneficial that an alternative to a company limited by guarantee is available for an 'incorporated' charity. Nevertheless, it would be helpful if any proposals compliment the company forms that already exist and the legislation in relation to registration, control and management in the various jurisdictions in the UK and that the proposed changes to the charity regulations adopt a consistent approach in respect of governance, registration, regulation, winding-up, insolvency or dissolution. For example, although Trustees' home addresses are provided in the Trustee Details submitted to the Charity Commission in England and Wales, the names are not made public. It would be desirable for this to be reaffirmed in the Scottish legislation for both unincorporated associations and directors of SCIO's. If there is to be publication of home address a procedure, similar to that under the Companies Acts, for confidentiality orders will be required.

We query the use of the title "Scottish Charitable Incorporated Organisation". Will it be possible for a charity to be both a Scottish Charitable Incorporated Organisation and a Charitable Incorporated Organisation in England and Wales? If so must it use both titles on documents? (*Part 1 Section 38*)

## **6. Regulating relating to SCIOs**

We note the proposal to make further provision in order to regulate the amalgamation and transfer of SCIO properties to other SCIO's. Cancer Research UK has subsidiaries in Scotland and in other jurisdictions in the United Kingdom. We trust that the regulations made will also cover the position where charities registered in England and Wales are merging with charities registered in Scotland and that the process will be as straight forward in such arrangements as it would be for an amalgamation between two SCIO's (*Part 1 Section 42*).

## **7. Fundraising & Funding for Benevolent Bodies – Preliminary & Control of fundraising**

We very much welcome these provisions which promote a positive move toward increasing the public's trust and confidence in the sector. With regard to Section 61 we note that secondary legislation will contain the detail of the required statements to the public and the content of the relevant agreements between charities and Professional Fundraisers and Commercial Participators. We consider that this further detail is vital to the implementation of Section 61 and to the public's confidence in the sector and accordingly suggest that this further detail should be included in the Bill itself rather than waiting for secondary legislation (*Part 3 Sections 60-64*).

## **8. Public benevolent collections**

We are extremely encouraged by the sections on public benevolent collections which are straightforward and should prove to be less administratively burdensome than the current proposals under the English Bill. In particular we are pleased to see that there will be no need to obtain a Certificate of Fitness from Local Authorities and that there will be provision for "designated national collector" status. We look forward to being consulted on any criteria OSCR proposes as being necessary to obtain and retain the designation of a designated national collector (*Part 3 Sections 65-71*).